IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.Rev.Pet.No. 546 of 1998(M)

CRA.114/1996 of ADDL. SESSIONS COURT, THRISSUR
CC.159/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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REVN. PETITIONER:

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1. PRADEEP, S/O. PUDUPPILLI PAVITHRAN, THOTTIPPAL VILLAGE DESOM, MUKUNDAPURAM TALUK.

2. ANILAN, S/O. PUDUPPILLI PAVITHRAN, THOTTIPPAL VILLAGE, DESOM, MUKUNDAPURAM TALUK.

3. SHAJU, S/O. PUDUPPILLI PAVITHRAN, THOTTIPPAL, VILLAGE DESOM, MUKUNDAPURAM TALUK.

4. PAVITHRAN, S/O. PUDUPPILLI RAMAN, THOTTIPPAL VILLAGE DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.T.M.CHANDRAN
SRI.M.K.DAMODARAN (SR)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERLA, ERNAKULAM

BY ADV. SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 2863/1998 IN CRL. R.P. 546/1998

DISMISSED

26.03.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 546 OF 1998

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Dated this the 26th day of March 2007

O R D E R

The revision petitioner is the accused 1 to 4 in C.C. No.159/1994 who stands convicted for the offences under sections 323, 324, 326 and 341 r/w Section 34 of the Indian Penal Code and sentenced, as modified by the appellate court, to undergo rigorous imprisonment for nine months each for the offence under section 326 IPC. The rest of the sentence awarded by the trial court i.e., rigorous imprisonment for three months for the offence under section 323 IPC and rigorous imprisonment for six months for the offence under section 324 IPC, stand confirmed. No separate sentence has been awarded for the offence under section 341 IPC.

2. The prosecution case is that on 04.06.1994 at about 12.30 p.m. the accused in furtherance of their common intention restrained PW1 who was riding a motor cycle and attacked him with weapons like iron pipe and nunjak. The evidence adduced in the matter consisted of the testimony of PWs 1 to 9, Exts. P1 to

P7 and MOs 1 and 2. In support of the prosecution version PW1, the injured and PW2, the occurrence witness has testified. The rest of the witnesses turned hostile to the prosecution. It is pointed out that it can be found from the evidence of PW9, the doctor who proved Ext.P7, wound certificate the only major injury is the loss of one tooth. The other injuries are only lacerated wounds. As per the prosecution allegations, he has been beaten with the iron pipe and beaten repeatedly with the nunjak. As pointed out by the counsel for the revision petitioner the injuries would have been more serious had it been the case of beating with an iron pipe and nunjak. There is no other injuries over the lip or face which would have resulted had he been beaten with the nunjak on the face and as a result of which he lost one tooth. In the circumstances, it appears that the prosecution version as such cannot be said to have been established beyond reasonable doubt. In the circumstances, it appears that the loss of tooth as such cannot be the result of blow on the face with a weapon like nunjak as alleged. I find that the conviction for the offence under section 326 IPC, in view of the above evidence, cannot be

sustained. Hence, the conviction for the offence under section 326 is set aside.

3. All the same, in view of the evidence of the injured witness and PW2, the occurrence witness the assault stand proved. In the circumstances, the convictions for the rest of the offences are upheld.

4. The incident had taken place in the year 1994 and it is more than one decade since the occurrence and the accused has been facing the proceedings so far. In the circumstances, the sentence imposed on the accused for the offence under section 324 IPC is modified to pay a fine of Rs.5,000/- each and in default to undergo simple imprisonment for three months each. The fine amount, if realised, shall be paid to PW1. No separate sentence is awarded for the offence under sections 323 and 341 IPC.

Thte Crl.R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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